tract between the appellants and Bangunan Zain. He failed to note that the contract was between the ten Tengkus expressly described as landlords in the contract for rental of a portion of Zain Building. The ten Tengkus were therefore the landlords in respect of the demised premises known as Zain Building. Pursuant to the contract, the appellants paid rental to Tuan Alang, as representative of the ten Tengkus. As such there is no separate contract.

A landlord can let out his house, which he calls "Sri Chantek" or whatever names to a tenant and having the words "Sri Chantek" written on the receipt does not make "Sri Chantek" the landlord. This is particularly true if the landlord is renting out separate rooms in a big building and the building is normally named. It would be different if the name of the landlord would be the same as the name of the building and this fact is clearly expressed in the contract. But not in this case. The contract does not indicate Zain Building as the landlord and the plaintiff is a limited company incorporated under the Companies Act and Zain Building which might be a sole proprietorship or a partnership are completely different from a limited company which possesses a legal entity.

When the appellants continued to pay to Messrs Dzaiddin & Co., the solicitors, again there was no indication that the respondents were the landlord. The solicitors' receipt P3 merely stated rental for premises No. 3763, Jalan Temenggong, Kota Bharu. They did not even state "Zain Building". Here again it did not make the solicitors the landlord even though the name of the solicitors was printed at the top and signed also by the solicitors.

Counsel for the respondents pleaded estoppel which is under section 116 of the Evidence Act. I think the question of estoppel does not arise here as the appellants had never acknowledged the respondents as their landlord.

As such I am of the opinion that the respondents are not the landlord and that their claim should fail on this point alone.

The other two points for consideration should be taken together, that is whether the notice to quit was valid and whether the tenancy created was a monthly tenancy or for a term.

In my opinion the contract entered by the parties herein clearly established a lease for a term. The words "to be held by the tenant for a period of 3 years . . ." cannot be interpreted in any other way although in *Butterworths'* Encyclopaedia of Forms and Precedents, Vol. 11, 4th Edition the word "term" is normally used. But I do not think it makes any difference if the word "period" is used. The arguable part here is that the rental is to be paid monthly. But notwithstanding this method of payment, the contract does not turn it into a monthly tenancy. For instance, a term of tenancy for 10 years at the yearly rental of $1,000 does not turn it into a yearly tenancy. A tenancy for a term of years may be terminated if there is the agreement of the parties in providing notice to terminate in the contract. In this case there is no provision for such notice. Advance rents for three months were collected and provision for the tenant to deliver up possession at the end of the term (here the word "term" was used) created and option for additional 3 years' lease was provided.

A tenancy for years is created by stating a definite number of years, but it may be expressed to be determinable by either party during the term by giving a specific notice (see The Encyclopaedia of Forms and Precedents 4th Edition Volume 11).

A yearly tenancy is properly created by the words "from year to year". Similarly a monthly tenancy is created by the words "from month to month" which is not in this case.

Where a premises are held for a term of years and the tenant holds over at the end of the term, a new yearly or periodic tenancy will ordinarily be established by the acceptance of rent by the landlord unless the intention to create such a new tenancy can be disproved (*Clarke* v. *Grant*[1]).

Where a tenant holds over and where the rent payable under the lease is expressed as a yearly sum so that weekly, monthly or quarterly payments are instalments of that yearly rent, the new periodic tenancy will be a yearly tenancy; but where the rent is expressed in the lease as being a weekly, monthly or quarterly sum, the new tenancy will be respectively a weekly, monthly or quarterly tenancy (see *Adler* v. *Blackman*[2]).

Thus in the instant case I am of the opinion that the tenancy is for a term and if at the end of the term, the tenant holds over, then and only then the tenancy will turn into a monthly tenancy. In the instant case, a month's notice given by the respondents to the appellants before the completion of 3 years' term is bad and ineffective.

I allow the appeal. The order of the learned President is set aside. The respondents' claim is dismissed with costs both in the court below and here. The deposit of $150 paid by the appellants towards appeal costs be refunded to the appellants.

Appeal allowed.

Solicitors: *Wrigglesworth & Co.: Dzaiddin & Co.*

R.A.P. NATHAN v. HAJI ABDUL RAHMAN BIN HAJI YUSOFF & ORS.

[O.C.J. (Syed Agil Barakbah J.) June 30, 1979]
[Alor Star — Civil Suit No. 11 of 1978]

Land Law — Malay Reservation Land — Joint venture with non-Malay for development of land — Subsequent agreement for transfer of land — Caveat — Caveat entered by non-Malay — Caveat extended — Whether non-Malay has caveatable interest — Application to set aside caveat — Whether brought by person aggrieved — Malay Reservation Enactment, Kedah, s. 6 — National Land Code, ss. 323, 325, 326, 327 & 328.

In this case the lands in question, Malay reservation lands, originally belonged to the first defendant. He sold it to the second defendant who entered into a joint venture with the plaintiff to develop the land. Subsequently the second defendant agreed to sell and transfer the lands to the third defendant who in turn transferred the lands to a limited company in which he was the managing director.

The plaintiff sought a declaration that the agreement between the second and third defendants was void and he also claimed specific performance of the agreement between him and the second defendant. He also entered a caveat against the said lands and this caveat was extended by the court. The third defendants applied (a) that the writ of summons against him be set aside or struck out, (b) that the caveat entered by the plaintiff be set aside and (c) that the order for extension of the caveat be set aside.

Held: (1) the dispute between the parties had to be resolved by action in court;

(2) the third defendant was a person aggrieved by the existence of the caveat, even though he had transferred the lands to the company, and therefore could make the application to set aside the caveat;

(3) the plaintiff had a caveatable interest in the said lands;

(4) although the agreement between the plaintiff and the second defendant could be regarded as dealing in reservation lands, it was not one which was contrary to the provisions of the Malay Reservation Enactment;

(5) the applications of the third defendant relating to the caveat must be dismissed, as the plaintiff was entitled to enter a caveat against the lands.

Cases referred to:-

(1) *Letchumanan* v. *Eng Mee Yong & Ors.* [1977] 1 M.L.J. 7.

(2) *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim & Ors.* [1959] M.L.J. 257, 258.

(3) *Macon Engineers Sdn. Bhd.* v. *Goh Hooi Yin* [1976] 2 M.L.J. 53.

(4) *Amon* v. *Rachel Tuck & Sons Ltd.* [1956] 1 Q.B. 357.

(5) *Pegang Mining Co. Ltd.* v. *Choong Sun & Ors.* [1969] 2 M.L.J. 52.

(6) *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145, 148.

(7) *Sing Lian Express Sdn. Bhd.* v. *Soh Kim Tee* [1974] 2 M.L.J. 24.

(8) *Foo Say Lee* v. *Ooi Heng Wai* [1969] 1 M.L.J. 47, 48.

CIVIL SUIT.

Darshan Singh for the plaintiff.

Chooi See Mun (*Mohamed Nor bin Mohamed* with him) for the 3rd defendant.

Cur. Adv. Vult.

Syed Agil Barakbah J.: There are two applications by summons-in-chambers: —

Firstly, that the writ of summons and services thereof against the third defendant be set aside or struck out on the ground that it does not disclose any reasonable cause of action and is frivolous, vexatious and an abuse of the process of the court; secondly, the private caveat filed by the plaintiff against the third defendant's five pieces of land situated in Mukim Pekula, District of Kuala Muda, Kedah, (hereinafter called "the said lands") be set aside; and thirdly, the order for extension of the caveat dated January 16, 1978, at the instance of the plaintiff be set aside. (Enclosure 7).

The second application is for the setting aside of the order dated January 13, 1979, further extending the said caveat for a period of three years. (Enclosure 27).

At the request of both counsel arguments were heard in open court.

Mr. Chooi See Mun and Encik Mohd. Nor bin Mohamad appeared for the third defendant and Mr. Darshan Singh appeared for the plaintiff.

It is conceded that the said lands are Malay reservation lands. According to the statement of claim, the second defendant purchased from the first defendant the said lands under a sale agreement dated February 27, 1974 (hereinafter called "the first agreement"). The plaintiff and the second defendant entered into a joint venture agreement to develop the said lands in a housing project dated March 14, 1974, and a supplementary agreement dated May 20, 1974, in respect of the said lands (hereinafter called "the second agreement"). Subsequently on June 14, 1975, the second defendant entered into a sale agreement with the third defendant (hereinafter called "the third agreement") for the sale and transfer of the said lands to the latter, allegedly in breach of the joint venture agreement with the plaintiff. The area of the five pieces of land is 12 relongs 105 jembas and they were sold for the sum of $153,000. The purchase price was to be paid in four instalments as stated in paragraph 5(b). It is alleged that the plaintiff has paid a sum of $120,000 for the first three instalments leaving a balance of $33,800. Under the second agreement the second defendant agreed to allow the plaintiff to subdivide and construct houses for sale on the said lands. Under the supplementary agreement dated May 20, 1974, it was also agreed that the plaintiff had the sole and exclusive right to develop the said lands and he was entitled to possession thereof, and the second defendant was not allowed to lease, mortgage or charge the said lands. The plaintiff accordingly employed architects and solicitors to draw up survey, subdivision, conversion and building plans and submitted these to the local authorities. The plaintiff alleges that the third agreement entered into between the second and third defendants was made fraudulently and that the third defendant with the knowledge of the previous agreements was therefore privy to the second defendant's fraud. The plaintiff claims judgment for a declaration, *inter alia*, that the third agreement between the second and third defendants is null and void and for specific performance of the second agreement and the supplementary agreement entered into between the plaintiff and the second defendant. In his affidavit (Enclosure 8) supporting the first application, the third defendant alleges as a result of the third agreement on payment of the sum of $33,800, the said lands were transferred to the third defendant, i.e. three pieces by the second defendant and the two remaining pieces by the first defendant. The transfer was done after the second defendant had been informed by the plaintiff that he was unable to raise sufficient funds and was no longer interested in the joint venture and that the plaintiff was well aware of the negotiations of sale and the joint venture agreements between the second and third defendants. It is therefore alleged that had it not been for the third defendant paying up the balance of the purchase price, the first agreement of sale between the second and first defendants would have fallen through. In the circumstances owing to the lapse of one and a half years, it is alleged that the plaintiff acquiesced to the subsequent agreement.

In my view, before any conclusion can be made, evidence will have to be called, both oral and documentary, in a proper proceeding, particularly when the allegation by the plaintiff against the second and third

defendants is for fraud and the plaintiff's claim is for specific performance of the agreement, i.e. a claim on the contract. Even if as alleged that the plaintiff has repudiated his agreement, he cannot be precluded from suing on a contract. (*Letchumanan* v. *Eng Mee Yong & Ors.*[1]). In view of the allegations stated in the statement of claim, the plaintiff's right of action is not only with the second defendant but also with the third defendant. Although as submitted the third defendant had in due course transferred the said lands to a company of which he is the managing director, and is therefore no longer the registered owner of the lands, he is still bound to fulfil his agreement with the second defendant, i.e. the third agreement which was made with the full knowledge of the plaintiff's involvement in the second agreement with the second defendant and which is also the subject-matter of this suit.

I propose to deal with the issues relating to the caveat in both applications together.

According to the record, the plaintiff applied under section 326(2) of the National Land Code (hereinafter called "the Code") for extension of Caveat No. 496/77 which he had lodged after he had received a notice of its removal dated January 10, 1978. If no order of court was obtained before February 10, 1978, the caveat would be removed. Extension was allowed for a period of one year, i.e. till January 15, 1979. (Enclosure 5A). The third defendant having filed conditional appearance, filed by summons-in-chambers an application to set aside the writ and the caveat. Both the plaintiff and counsel were absent when the application was heard and it was allowed by default. (Enclosure 10). Subsequently the plaintiff filed an inter-party application by way of summons to set aside that order which was allowed after argument. (Enclosure 19). On January 4, 1979, the plaintiff filed an *ex parte* application in chambers for further extension of the said notice of removal under the same section. An order was made further extending it for a period of three years.

It was submitted that no extension ought to have been allowed since the caveat has been set aside by the judgment of the court. That was judgment by default which was subsequently set aside on the application of the plaintiff. The effect of setting aside the judgment in default revives the original order of court which includes the order extending the notice of removal of the caveat under section 326 of the Code. This section deals with the extension of notice of intended removal served by the Registrar on the plaintiff. The court is empowered under subsection (2) on the application of the plaintiff within the period of one month to extend the period of notice from time to time. The Registrar on being duly served with such court order cannot remove the said caveat until the expiry of the extended period. Under section 328 the normal life of a caveat is six years. However, it can be sooner withdrawn at the instance of the person or body at whose instance it was entered (section 325) or removed by the Registrar under section 326 or by the order of court on the application of the person or body aggrieved by its existence (section 327). Once it lapsed the court has no power to revive, renew or continue a caveat as its extinction is final and irrevocable. That is because the court has no inherent jurisdiction to go beyond the powers expressly given to it by statute (see *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim & Ors.*[2]). In the light of the above, there is no provision in the Code, either expressly or by way of implication, that a caveat set aside by judgment in default cannot be revived. Under the rules of the Supreme Court, the court is empowered to set aside a judgment by default thereby reviving the original judgment or order including the caveat. So long as it has not lapsed by any of the provisions stated above, I am of the considered judgment that the extension allowed under section 326 should remain.

The other ground regarding the affidavit relating to the application being made by the plaintiff's solicitor (Enclosure 22) in his capacity as such does not in my view contravene section 326 since the application by way of summons (Enclosure 21) was made by the plaintiff on whom the notice of the removal of the caveat had been served by the Registrar. This ground should therefore fail.

The next point is whether the third defendant is a person aggrieved by the existence of the caveat as provided under section 327(1). A pertinent question that arises is whether he will suffer loss if the caveat lodged by the plaintiff is not removed. At the time that the caveat was lodged, the third defendant was the registered owner of the said lands but he transferred the same to a limited company in which he was the managing director immediately after the judgment in default. He is therefore not the registered owner of the said lands. Nevertheless, the third agreement executed between the third and second defendants was an agreement of sale of the said lands for which the latter has paid a considerable sum of money with provision to enable him to develop the said lands as a housing project and for which he is allowed to take over all the benefits and liability in the sales of a certain number of houses erected thereon. He is also given the sole and exclusive right and management of the project. The second defendant has to transfer the said lands to him after the payment of the whole of the purchase money by instalments as agreed. It seems that as a result of that agreement the third defendant made arrangements with the company to develop the said lands on his behalf in accordance with the abovementioned agreement with the second defendant. In other words, he is still bound by the said agreement in order to ensure that the company develops the said lands. In the circumstances, as the facts present, the third defendant falls within the meaning of a person aggrieved by the existence of the caveat under section 327(1) and may apply to the court for an order of its removal by an *ex parte* application. The third agreement which is still in existence appears to be a valid agreement for the sale of land. It is clear from authorities that he as such is entitled to lodge a caveat to protect his rights under the contract (see *Macon Engineers Sdn. Bhd.* v. *Goh Hooi Yin*[3]). The fact that the limited company of which the third defendant is managing director is now the registered owner, does not in my view alter the position of the third defendant. On the other hand, a caveat lodged by the plaintiff may affect the company in relation to the enjoyment of his legal right in developing the lands.

It seems to me, therefore, the presence of the company before the court may become necessary in order to enable it to adjudicate upon and settle all the questions involved in the case effectively and completely. The court is empowered under Order 16 rule 11 of the Rules of the Supreme Court to order that the company be joined as a co-defendant. They may apply to be so joined as an intervener or the plaintiff may also apply by way of notice of motion to the court. The first-mentioned course appears to be more appropriate (see *Amon* v. *Rachael Tuck & Sons Ltd.*,[4] and *Pegang Mining Co. Ltd.* v. *Choong Sam & Ors.*[5]).

The next important issue is whether the plaintiff has a caveatable interest in the said lands. Section 323(1) of the Code states: —

"The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;"

I do not think subsections (b) and (c) are applicable.

Now, the whole system of caveats is founded on the principle that they exist for the protection of alleged as well as proved interests and of interests that have not yet become actual interests in land. In the case of an agreement which is valueless as a transfer or burdening instrument but is good as a contract, the contractual right may be sufficient to give a person an "interest" in the land for the purposes of protection by restrictive entry in the register; the claim to an interest in land arising out of the contract is sufficient to make it a caveatable interest and to support a caveat (see *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjuh*[6]). Thus, an agreement which is a sub-lease though not in a statutory form, is treated in equity as an agreement for a sub-lease and the lessee has a right in equity to a registrable interest in the land and therefore has a caveatable interest under the section, *supra*. In *Sing Lian Express Sdn. Bhd.* v. *Soh Kim Tee*,[7] where the respondent had given irrevocable proof of his willingness to purchase the land and offered to pay the deposit and a draft agreement was prepared, Syed Othman J. (as he then was) held that an option for the sale of the applicant's land to be exercised within a certain period gives the respondent a caveatable interest in the land.

In the present case, it is abundantly clear from the agreement executed between the plaintiff and the second defendant that apart from the plaintiff paying the major portion of the purchase price he was also given the sole and exclusive right to develop the said lands, to sub-divide and construct houses for sale and to share the profits with the second defendant. The agreement naturally involves sales of houses including the land to prospective buyers and issues of documents of title which will affect the registration, endorsement or entry on the register document of title thereto. I hold in the circumstances that the plaintiff has a caveatable interest in the said lands.

It is also urged that the plaintiff has no right to caveat the lands by virtue of section 6(1) of the Malay Reservations Enactment No. 63 (Kedah). The subsection states, *inter alia*, that where any reservation land under a document of title is held by a Malay, no right or interest therein shall vest in any person who is not a Malay, whether by transfer, sale in the execution of a decree, sale at the instance of a chargee or otherwise; subsection (2) states that any document or agreement purporting to vest in any person any right or interest contrary to the above shall be void. Section 9 allows the leasing of such land by a Malay to a person other than a Malay, etc. for a term not exceeding three years. That provision is also included in Schedule "A", third paragraph of the Enactment. In the second paragraph of the Schedule it is stated that all documents of title except Permits, Banchi Sewa and Surat Akuan may be charged to anyone. If the chargor does not pay the money due, the land so charged if owned by a Malay can be sold only to a Malay, and if owned by a Siamese can be sold only to a Malay or a Siamese. In short, subject to what is stated above as regards to sale, the Enactment allows reservation land to be charged to a non-Malay. The proper test to be applied is whether any dealing in reservation land is contrary to the provisions of subsection (2). If so, any such agreement purporting to vest in any person, any right or interest shall be void. Although the agreement between the plaintiff and the second defendant could be regarded as dealing in reservation land, it is not, in my view, one which is contrary to the provision of the Enactment (see *Foo Say Lee* v. *Ooi Heng Wai*[8]).

I therefore dismiss the two applications by the third defendant with costs.

Order accordingly.

Solicitors: *Darshan Singh & Co.; Wong, Chooi & Mohd. Nor.*

PUBLIC PROSECUTOR v. TEH CHENG POH

[O.C.J. (Gunn Chit Tuan J.) August 14, 15 & 16, 1979]

[Penang — Criminal Trial No. 15 of 1979]

Criminal Law and Procedure — Charges of possession of firearm and ammunition — Credibility of police witnesses — Discretion of prosecution in calling witnesses — Corroborative evidence — First information report not produced — Burden of proof in criminal case — Evidence Act, 1950, s. 114(g) — Internal Security Act, 1960, s. 57.

In this case the accused was retried pursuant to the order of the Federal Court. The accused was charged with two charges under the Internal Security Act, 1960, for possession of a revolver and possession of ammunition. At the trial the prosecution called only four witnesses, the main witness being a police officer in charge of a police patrol car. Thirteen other witnesses who had been subpoenaed by the prosecution were offered to the defence. It was argued that (a) that the police officer in charge of the police petrol car (PW2) was an unreliable and interested witness and that his evidence should not be accepted by the court; (b) that a number of witnesses who should have been called by the prosecution was not called to give evidence; (c) that the first information report was not produced (d) that the accused had rebutted the evidence for the prosecution.

Held: (1) the police officer in charge of the police patrol car (PW2) was not an interested witness but a public officer performing his duties. In the absence of contradiction or anything improbable in his evidence, he should be accepted as a witness of truth and as a reliable witness;

(2) the prosecution has a discretion in calling witnesses and in this case the presumption under section 114(g) of the Evidence Act, 1950, did not arise;

(3) PW2 in this case was not the complainant and the